

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6146 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JAGDISHCHANDRA AMBALAL RAY

Versus

STATE OF GUJARAT

Appearance:

MR NV ANJARIA for Petitioner

MR DA BAMBHANIA for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 09/10/97

ORAL JUDGEMENT

RULE.

Mr D A Bambhania, learned AGP waives service of Rule on behalf of the respondents.

At the request of the learned Advocates for the parties, the matter is taken up for final hearing today.

The petitioner was appointed as Agricultural Assistant by order dated 15.6.1965 and at that time on the basis of the School Leaving Certificate, the date of birth was entered as 8.8.1939. In the year 1970, he applied for correction of date of birth. The competent officer relying on an affidavit of the Grandfather of the petitioner, affirmed before the Civil Judge, Dakore made correction in the Service Book entering the petitioner's date of birth as 5.6.1942. Copy of the Service Book was shown to the petitioner on 6.4.1979 wherein his date of birth was entered as 5.6.1942. In the month of February, 1997, respondent No.3 sought formal permission from respondent No.2-Joint Director of Agriculture that the petitioner has attained 55 years of age on the basis of the date of birth i.e. 5.6.1942 and that he being physically fit, be permitted to continue in service upto 58 years. The respondent No.2-Joint Director, by letter dated 18.9.1997 granted such permission. However, by letter dated 21.7.1997, the respondent No.2 asked the petitioner to produce the material evidence with respect to the correctness of the date of birth of the petitioner as 5.6.1942. On the basis of the said letter dated 21.7.1997, the respondent No.3 made a proposal for retirement of the petitioner on 23.7.1997 and accordingly he retired on 30.8.1997.

2. Mr N V Anjaria, learned Advocate appearing for the petitioner, contended that the date of birth of the petitioner was duly verified and recorded in the year 1970, and it validly operated for 27 years and now it cannot be changed by the respondents. It is further contended that the respondents are estopped in law to change the date of birth after 27 years. It is next contended that the petitioner has legitimate expectations to continue in service taking the date of birth recorded in 1970. The learned Advocate has placed reliance on various decisions of the Apex Court reported in 1990 SC 1075, AIR 1996 SC 194. It is also contended that the Apex Court has taken the view in a number of cases that the employee cannot be allowed to have change of date of birth at the fag end of his career and as such taking the same ratio, the employer should also not be allowed to change the date of birth at the fag end of the career of an employee. Though there is no direct authority available on the point, the learned Advocate referred to a decision of the Apex Court wherein it is held that the employee should not be allowed to raise controversy with respect to the date of birth at the fag end of his career. He relies upon the decision of the Apex Court in the case of Burn Standard Co.Ltd.vs. Dinabandhu Majumdar & Anr., reported in JT 1995 (4) SC 23, and in the case of

Union of India vs. Harnam Singh, reported in 1993 (3) SCC 162.

3. In my view the principles of equitable estoppel or legitimate expectation are not attracted in the present case, as the specific case against the petitioner is of manipulation and tampering in the Service Book. I have also looked into the Service Book. It would not be proper for me to express any opinion at this stage, else it may prejudice the case of either of the parties. Suffice it to say that, no order has been produced by the petitioner to show that in the year 1970, the representation of the petitioner was decided by the competent authority and direction was given for correction in the date of birth. It appears that the correction has been made by the Assistant Oil Seeds Development Officer. The question is whether the Assistant Oil Seeds Development Officer was competent to make change in the date of birth is still a question which is required to be examined.

4. However, there is substance in the contention raised by the petitioner that the date of birth has been changed at his back and he was not given any opportunity of hearing. The Apex Court in the case of State of Orissa vs. Dr (Mrs.) Binapani Dei, reported in AIR 1967 SC 1269 has held that even administrative order which involves civil consequences have to be passed consistently with the rules of natural justice. The categorical case of the petitioner is that the date of birth was corrected in 1970 after due verification and the Service Book was shown to him in the year 1979 carrying the petitioner's date of birth as 5.6.1942 and that has been changed to petitioners detriment without notice to him. In my view, the respondent authorities committed error in correcting the date of birth without giving opportunity of hearing to the petitioner. Simply asking the petitioner to produce material evidence with respect to the date of birth is not sufficient to comply with the principles of natural justice. The categorical case against the petitioner is that there is tampering and manipulation in the Service Book. The allegations are serious and they cannot be acted upon without opportunity given to the petitioner to explain.

5. In view of the aforesaid, this Special Civil Application is allowed and the change in the date of birth as 8.8.1939 is quashed and set aside. However, as a result of this petition, the petitioner will not be reinstated. The respondent will hold an enquiry and complete the same within a period of three months from

the date of receipt of writ. In case the conclusion is that the petitioner's date of birth is 6.5.1942, he will be entitled to reinstatement with all consequential benefits.

Rule is made absolute to the aforesaid extent.

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msp.